

Senate Bill No. 1206

Passed the Senate August 22, 2012

Secretary of the Senate

Passed the Assembly August 20, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2040 and 3134.5 of the Family Code, relating to child abduction prevention.

LEGISLATIVE COUNSEL'S DIGEST

SB 1206, Walters. Child abduction prevention.

(1) Existing law requires, upon the commencement of proceedings for dissolution or nullity of marriage or legal separation of the parties, that the summons contain a temporary restraining order restraining both parties from, among other things, removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

This bill would, additionally, provide that the temporary restraining order restrain the parties from applying for a new or replacement passport for the minor child or children of the parties without the prior written consent of the other party or an order of the court.

(2) Existing law authorizes the court, upon request of the district attorney, to issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The protective custody warrant for the child is required to contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court.

This bill would authorize the court to also include within the protective custody warrant for the child an order to freeze the California assets, as defined, of the party alleged to be in possession of the child. The bill would provide that, upon noticed motion, any order to freeze assets pursuant to these provisions may be terminated, modified, or vacated by the court upon a finding that the release of the assets will not jeopardize the safety or best interest of the child. The bill would also require that if an asset freeze order is entered pursuant to these provisions, and the court subsequently dismisses the protective custody warrant for the child, notice of the dismissal be immediately served on specified entities.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as Keisuke's Law.

SEC. 2. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state, or from applying for a new or replacement passport for the minor child or children, without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.

(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

(5) Execution and filing of a disclaimer pursuant to Part 8 (commencing with Section 260) of Division 2 of the Probate Code.

(c) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

“WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.”

(d) For the purposes of this section:

(1) “Nonprobate transfer” means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, pay on death account in a financial institution, Totten trust, transfer on death registration of personal property, or other instrument of a type described in Section 5000 of the Probate Code.

(2) “Nonprobate transfer” does not include a provision for the transfer of property on death in an insurance policy or other coverage held for the benefit of the parties and their child or

children for whom support may be ordered, to the extent that the provision is subject to paragraph (3) of subdivision (a).

(e) The restraining order included in the summons shall include descriptions of the notices required by paragraphs (2) and (3) of subdivision (b).

SEC. 3. Section 3134.5 of the Family Code is amended to read:

3134.5. (a) Upon request of the district attorney, the court may issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The request by the district attorney shall include a written declaration under penalty of perjury that a warrant for the child is necessary in order for the district attorney to perform the duties described in Sections 3130 and 3131. The protective custody warrant for the child shall contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court. The protective custody warrant for the child may also contain an order to freeze the California assets of the party alleged to be in possession of the child. The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night. For purposes of this subdivision, “assets” means funds held in a depository institution, as defined in subdivision (a) of Section 1420 of the Financial Code, in California.

(b) Upon a declaration of the district attorney that the child has been recovered or that the warrant is otherwise no longer required, the court may dismiss the warrant without further court proceedings.

(c) Upon noticed motion, any order to freeze assets pursuant to subdivision (a) may be terminated, modified, or vacated by the court upon a finding that the release of the assets will not jeopardize the safety or best interest of the child.

(d) If an asset freeze order is entered pursuant to subdivision (a), and the court subsequently dismisses the warrant pursuant to subdivision (b), notice of the dismissal shall be immediately served on the depository institutions holding any assets pursuant to the freeze order.

Approved _____, 2012

Governor